

Minutes of the  
Board of Minerals and Environment Meeting  
Matthew Environmental Education and Training Center  
523 East Capitol Avenue  
Pierre, South Dakota

10:00 a.m. CST  
November 21, 2002

CALL TO ORDER AND ROLL CALL: The meeting was called to order by Chairman Richard C. Sweetman. He appointed Chuck Monson as secretary pro tern who noted that a quorum was present.

BOARD MEMBERS PRESENT: Richard Sweetman, Lee McCahren, Linda Hilde, Wilbert Blumhardt, and Chuck Monson. Kathy Johnson, Mike DeMersseman and Brian Radke participated via telephone.

BOARD MEMBER ABSENT: Pat Healy.

OTHERS PRESENT: See attached attendance sheet.

APPROVAL OF MINUTES FROM SEPTEMBER MEETING: Motion by DeMersseman, seconded by Monson, to approve the minutes of the September 18-20, 2002, Board of Minerals and Environment meeting. Motion carried.

SURFACE MINING ISSUES: Eric Holm was administered the oath by Lee McCahren. He testified regarding transfer of mine permit, liability, and release of surety, releases of liability, releases of surety, transfers of liability, and acceptance of surety riders (see attached matrix sheet).

Transfer of Mine Permit, Liability, and Release of Surety: Mr. Holm stated that Les Wade, holder of Small Scale Mine Permit No. 397, passed away in 2001. His son, Robert, is the president of Wade's Gold Mill near Hill City and has requested that the mine permit be transferred to Wade's Gold Mill.

Mr. Holm noted that Wade's Gold Mill submitted the transfer application, the \$100 transfer fee and the \$1,000 replacement surety bond to the department on August 15, 2002. The application was deemed complete on October 1, 2002. The department's recommendation to transfer the permit was prepared on October 31, 2002. The recommendation was published in the Custer County Chronicle on November 6 and 13, 2002. The department has not yet received the Affidavit of Publication, but staff verified by telephone on November 11, 2002, that the notice was published. No petitions to intervene were received by the department.

Mr. Holm noted that there will be no changes to the operating or reclamation plans in the mine permit. The surface owner of the site is the US Forest Service and the mineral owner is Wade's Gold Mill. The minerals mined are gold, silver and garnets.

The department's recommendation was to transfer Small Scale Mine Permit No. 397 from Les Wade to Wade's Gold Mill and to release Les Wade's \$1,000 reclamation surety to his estate.

Motion by Hilde, seconded by Blumhardt, to transfer Small Mine Permit No. 397 and liability from Les Wade to Wade's Gold Mill and to release \$1,000. Motion carried.

Releases of Liability and Surety: Motion by McCahren, seconded by Monson, to release liability and \$20,000 for Carstensen Contracting, Inc., Pipestone, MN, Mine License No. 02-750, Haakon County; release liability and \$2,000 for K & K Underground, Inc., Lennox, SD, Mine License No. 99-601, Turner County; release liability and \$20,000 for Simon Contractors, Rapid City, SD, Mine License No. 96-575, Pennington County; transfer license and liability from Colton Redi-Mix, Colton, SD, Mine License No. 83-245, Minnehaha County to James Ginsbach, Rapid City, SD, and release \$3,000 for Colton Redi-Mix. Motion carried.

Transfers of Liability and Releases of Surety: Mr. Holm reported that Golden Reward Mining Company, LP, Lead, SD, Mine License No. 86-340 has requested the transfer of liability for a site 2 1/2 miles southwest of Lead to Quinn Construction, Inc., Rapid City, SD, Mine License No. 95-535. Golden Reward gifted the property to the SD Parks and Wildlife Foundation. The site supplies gravel for the Rails to Trails in the area. Quinn Construction does the mining for the foundation.

The department recommended the transfer of liability from Golden Reward to Quinn Construction and to release Golden Reward's \$6,750 reclamation bond.

Tim Bjork, Director of the South Dakota Parks and Wildlife Foundation, stated that the property has been transferred from Golden Reward to the Foundation with the intent that after five years the property would then be transferred to Turbo Investments, LLC and Bradley Chase. Quinn Construction will be the operator. The Foundation will be able to use up to 75,000 yards of material from the site for the Mickelson Trail in the Black Hills.

Motion by Blumhardt, seconded by Hilde, to release \$6,750 and transfer liability from Golden Reward Mining Company, LP, Lead, SD, Mine License No. 86-340, Lawrence County to Quinn Construction, Inc., Rapid City, SD, Mine License No. 95-535; and release \$5,000 and transfer liability from K & K Underground, Inc., Lennox, SD, Mine License NO. 96-601, Turner County to Douglas D. Lund, Tea, SD, Mine License No. 02-753. Motion carried.

Transfers of Liability: Motion by Blumhardt, seconded by Hilde, to transfer liability from Aggregate Construction, Inc., Minot, ND, Mine License No. 89-382, Butte County to Weatherton Contracting Company, Inc., Beresford, SD, Mine License No. 88-364; and transfer liability from Concrete Materials, Sioux Falls, SD, Mine License No. 83-144, Minnehaha County to First Rate Excavate, Inc., Sioux Falls, SD, Mine License No. 98-675. Motion carried. Sweetman abstained from voting.

Releases of Liability: Motion by Monson, seconded by McCahren, to release liability for the following: Aggregate Construction, Inc., Minot, ND, Mine Permit No. 89-382, one site in Fall River County; Boom Concrete, Newell, SD, Mine License No. 92-442, one site in Butte County; Golden Reward Mining Company, LP, Lead, SD, Mine License No. 86-340, one site in Lawrence County; Hills Materials Company, Rapid City, SD, Mine License No. 83-42, one site in Pennington County; Elmer Hulsebus, Astoria, SD, Mine License No. 83-149, one site in Deuel County; H.F. Jacobs & Sons Construction, Inc., Aberdeen, SD, Mine License No. 83-188, one site in Faulk County; T.F. Luke & Sons, Inc., Kimball, SD, Mine License No. 83-11, one site in Haakon County; Obenauer Sand & Gravel, Eureka, SD, Mine License No. 84-282, two sites in Edmunds County; S & S Construction, Hot Springs, SD, Mine License No. 91-421, one site in Custer County; Stava Gravel, Clear Lake, SD, Mine License No. 83-185, one site in Deuel County; Butte County Highway Department, Belle Fourche, SD, Mine License No. 83-6, one site in Butte County; Fall River County Highway Department, Hot Springs, SD, Mine License No. 83-19, four sites in Fall River County; and Pennington County Highway Department, Rapid City, SD, Mine License No. 83-45, one site in Pennington County. Motion carried.

Acceptance of Surety Riders: Motion by McCahren, seconded by Blumhardt, to accept rider increasing surety to \$3,500 for Crandall Construction Company, Cayuga, ND, Mine License No. 83-244; and accept rider increasing surety to \$10,000 for Dawson Construction, Howard, SD, Mine License No. 83-21. Motion carried.

PETITION FOR SURETY FORFEITURE FOR MINE LICENSE NO. 88-376. WILLIAM L. WAGNER: Lee McCahren, who had been appointed hearing chairman, opened the hearing at 10:25 a.m. CST.

Roxanne Giedd, Assistant Attorney General, represented the Department of Environment and Natural Resources.

William Wagner was not present.

Ms. Giedd offered the following exhibits, which were admitted into the record.

DENR Exhibit 1- The department file on William Wagner, Mine License No. 88-376  
DENR Exhibit 2 - Copy of Mr. Cline's Powerpoint presentation  
DENR Exhibit 3 - Memorandum of Understanding between the Forest Service, US Department of Agriculture, and DENR  
DENR Exhibit 4 - Mine license inspection report dated October 1, 2002

Tom Cline, DENR Project Scientist, was administered the oath by Mr. McCahren. He testified that William Wagner was issued a mine license on September 21, 1988. Mr. Wagner submitted Certificate of Deposit #62721 in the amount of \$500 as surety for the reclamation of land affected by mining activity. This is a pegmatite mine that is located between Custer and Pringle on Forest Service land. Mr. Cline noted that Mr. Wagner's mine license was revoked on February 10, 2002, for failure to submit the annual report and fee.

Mr. Cline explained that pegmatite is a coarse grained igneous rock composed of granite along with quartz, feldspar, mica and other rare earth elements. The industrial minerals, feldspar and quartz, are extracted from the deposits and used by the glass and ceramic industries. Mica is used in construction materials and insulation.

On October 1, 2002, Mr. Cline conducted an inspection of the site. Based on letters that Mr. Wagner submitted to the department, Mr. Wagner has not conducted any mining activities at this site since 1993. Mr. Cline stated that following the October 1, 2002, inspection, it was determined that Mr. Wagner did not perform the required reclamation of the lands affected by his mining operation within three years, as required by SDCL 45-6-67.1.

Mr. Cline noted that the Forest Service, who is the surface owner of the affected land, has performed some reclamation work at the site due to safety concerns related to leaving the site unreclaimed. Reclamation that still needs to be done includes reseeding the site and planting trees to control erosion.

Mr. Cline showed the board several photographs of the site, which were taken April 3, 2001, May 1, 2001, and October 1, 2002.

Mr. Cline stated that a Memorandum of Understanding between the Forest Service, the US Department of Agriculture, and DENR allows the department to transfer the proceeds of surety covering a state mine license to the Forest Service for performance of reclamation activities. The department and the Forest Service will develop a reclamation plan for the site in accordance with the Memorandum of Understanding. The Forest Service holds a \$214.50 surety bond that Mr. Wagner submitted for reclamation of the site. If there is a violation, the \$500 bond the department holds and the \$214.50 bond the Forest Service holds can both be used for reclamation of the site.

The department requested that the board declare the \$500 Certificate of Deposit forfeited and transfer the proceeds from the Certificate of Deposit to the Forest Service.

Mr. Cline answered questions from the board.

Motion by Monson, seconded by Hilde, to adopt an Order declaring Certificate of Deposit No. 62721 in the amount of \$500 forfeited, transferring the proceeds of the Certificate of Deposit to the US Forest Service for performance of reclamation activities at the mine site, and authorizing Chairman Sweetman to execute the Order. Motion carried.

Mr. McCahren declared the hearing closed at 11:00 a.m. CST.

OTHER BUSINESS: The issuance of the 2002 General Air Quality Operating Permit for construction activities at a state facility in the Rapid City Air Quality Control Zone was scheduled as a contested case hearing before the board at their November meeting. The parties have since settled the matter so the hearing was canceled.

Ms. Giedd stated that there are two statutes that came into play regarding this matter - 34A-1-36 is the statute that authorizes municipalities and counties to have air programs. The important language in that statute is the sentence which states, "The air pollution control jurisdiction authorized pursuant to this section shall apply to state facilities located within the boundaries of the municipality or county in the event the municipality or county has been found to be in violation of National Ambient Air Quality Standards." The Rapid City area is not in non-attainment. EPA has declared it an unclassifiable area. However, EPA has been monitoring the situation and threatening to put Rapid City into nonattainment. Ms. Giedd noted that Rapid City adopted ordinances and has a program they are enforcing in Rapid City.

The problem occurred because the city attorney interpreted the statute to say this area is not in nonattainment, therefore, the city ordinance does not apply to state facilities. So the state highway systems were not being regulated by the county.

The other statute that must be considered is 34A-1-56, which is the statute that authorizes general permits for categories of air pollution sources. Ms. Giedd provided the board with a description of a general permit.

The board previously adopted Chapter 74:36:18 - regulations for state facilities in the Rapid City area.

Ms. Giedd noted that when it came time for the state to regulate contractors on the state highways, DENR made the decision to use the authority in 34A-1-56 to issue a general permit that requires all of the contractors to get approval for their activities. That general permit is what the contested case hearing was about.

Brian Gustafson provided the board with a copy of the general permit that the department and the parties agreed on in settlement of the issues.

Ms. Giedd stated that the first general permit was issued following the procedure. DENR obtained both comments and comments with request for a hearing. The department considered those comments and made some revisions to the proposed permit after meeting with the contractors.

Ms. Giedd discussed the issues that were raised by the parties submitting petitions for a contested case. She also pointed out the changes the department made to the general permit upon settlement by the parties.

Once the parties withdrew their requests for a hearing, the department administratively issued the general permit

Ms. Giedd and Mr. Gustafson answered questions from the board regarding general permits.

Wilbert Blumhardt noted that today, November 21, marks his 21<sup>st</sup> anniversary on the Board of Minerals and Environment.

Board of Minerals and Environment  
November 21, 2002, Meeting Minutes

Vonni Kallemeyn answered questions from the board regarding Homestake Mining Company's solid waste permit.

ADJOURN: The meeting was adjourned at 11:30 a.m. CST.

Karen Johnson 2/20/03  
Secretary Date

P. A. Neely 2/20/03  
Witness Date



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<u>License/Permit Holder</u>	<u>License/Permit</u>	<u>Site No.</u>	<u>Surety Amt.</u>	<u>Surety No.</u>	<u>Surety Company or Bank.</u>	<u>DENR Recommendation.</u>
<u>Transfer of Mine Permit, Liability, &amp; Release of Surety:</u>						
Les Wade (Deceased) Rapid City, SD	397		\$1,000	20104	First Western Bank, Hill City	Transfer permit and liability. Release \$1 000.
			SE1/4 Section 26; T45-R3E, Custer			
Transfer to:						
Wade's Gold Mill, Inc. Hill City, SD			\$1,000	80138	First Western Bank, Custer	
 <u>Releases of Liability &amp; Surety:</u>						
Carstensen Contracting Inc. Pipestone, MN	02-750		\$20,000	929249002	Western Surety Company	Release liability and \$20,000.
		750001	Section 13; T1N-R20E, Haakon			
K & K Underground, Inc. Lennox, SD	99-601		\$1,000	6016003	Home Federal Savings Bank, Lennox	Release liability and \$2,000.
			\$1,000	6213549	Home Federal Savings Bank, Lennox	
		601002	SE1/4 Section 7; T98N-R52W, Turner			
Simon Contractors Rapid City, SD	96-575		\$20,000	14-001-408	Liberty Mutual Insurance Company	Release liability and \$20,000.
		575003	E1/2 Section 22; T2N-R7E, Pennington			



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<u>Transfer of License, Liability, &amp; Release of Surety:</u>					
Colton Redi-Mix Colton, SD	83-245	\$3,000	58012893	Western Surety Company	Transfer license and liability. Release \$3,000.
	245003	NE1 /4 Section 24; T103N-R52W, Minnehaha			
Transfer to:					
James Ginsbach Rapid City, SD	83-245	\$1,000	33171475	Pioneer Bank & Trust, Rapid City	
<u>Transfers of Liability &amp; Releases of Surety:</u>					
Golden Reward Mining Co., LP Lead, SD	86-340	\$6,750	0457013516	Wells Fargo Bank, Lead	Transfer liability and release \$6,750.
	340002	NW 1 /4 SW 1 /4 Section 8; T4N-R3E, Lawrence			
Transfer to:					
Quinn Construction, Inc. Rapid City, SD	95-535	\$20,000	55-173881	United Fire & Casualty Company	
K & K Underground, Inc. Lennox, SD	96-601	\$5,000	3975899	Great American Insurance Company	Transfer liability and release \$5,000.
	601003	NW 1 /4 NW 1 /4 Section 31; T99N-R52W, Turner			
Transfer to:					
Douglas D. Lund Tea, SD	02-753	\$2,500	1700057840	First Premier Bank, Sioux Falls	

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License/Permit Holder	License/Permit	Site No.	Sure v Amt.	Surety No.	Surety Company or Bank	DENR Recommendation
<i>Transfers of Liability:</i>						
Aggregate Construction, Inc. Minot, ND	89-382		\$20,000	040 40 95	Great American Insurance Company	Transfer liability.
		382018	S1/2 SW 1 /4 Section 1 & N1/2 N W 1 /4 Section 12; T8N-R3E, Butte			
Transfer to:						
Weatherton Contracting Co. Inc. Beresford, SD	88-364		\$20,000	141 551847	Continental Casualty Company	
Concrete Materials Sioux Falls, SD	83-144		\$20,000	929159555	American Casualty Company of Reading, PA	Transfer liability.
		144005	SE1/4 SW 1 /4 Section 11; NE1/4 N W 1 /4 Section 14; less TR 1; T101N-R49W, Minnehaha			
Transfer to:						
First Rate Excavate, Inc. Sioux Falls, SD	98-675		\$20,000	701626	Capitol Indemnity Corporation	
<i>Release of Liability:</i>						
Aggregate Construction Inc. Minot, ND	89-382		\$20,000	040 40 95	Great American Insurance Company	Release liability.
		382015	E1/2 NE1/4 Section 1; T9S-R4E & W 1 /2 NW 1 /4 Section 6; T9S-R5E, Fall River			

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License/Permit Holder	License/Permit	Site No.	Surety Amt.	Surety No.	Surety Company or Bank.	DENR Recommendation
<u>Releases of Liability:</u>						
Boom Concrete Newell, SD	92-442	442002	\$1,000 \$500 S1 /2 SW1 /4 Section 21; T8N-R6E, Butte	09104 800009938	First National Bank, Newell First National Bank, Newell	Release liability.
Golden Reward Mining Co., LP Lead, SD	86-340	340001	\$6,750 SE1 /4 Section 1; T4N-R2E, Lawrence	0457013516	Wells Fargo Bank, Lead	Release liability.
Hills Materials Company Rapid City, SD	83-42	42017	\$20,000 51 /2 Section 3; T1 N-R6E, Pennington	14-006-952	Liberty Mutual Insurance Company	Release liability.
Elmer Hulsebus Astoria, SD	83-149	149003	\$1,500 \$500 \$500 \$500 NE1 /4 Section 16; T113N-R50W, Deuel	41365 53589 71195 82140	First National Bank, Brookings First National Bank, Brookings First National Bank, Brookings First National Bank, Brookings	Release liability.
H F Jacobs & Son Construction, Inc. Aberdeen, SD	83-188	188015	\$20,000 NW 1 /4 Section 26; T120N-R66W, Faulk	964 93 46	Fidelity & Deposit Company of Maryland	Release liability.

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License/Permit Holder	License/Permit	Site No.	Surety Amt.	Surety No.,	Surety Company or Bank,	DENR Recommendation
<i>Releases of Liability:</i>						
IF. Luke & Sons, Inc. Kimball, SD	83-11		\$20,000	92921 1763	American Casualty Company of Reading, PA	Release liability.
		11049	W1/2 NE1/4 Section 22; T1N-R20E, Haakon			
Obenauer Sand & Gravel Eureka, SD	84-282		\$3,144	305050	Great Plains Bank, Eureka	Release liability.
			\$1,081	306016	Great Plains Bank, Eureka	
		282006	SW1/4 Section 22; T124N-R72W, Edmunds			
		282005	SE1/4 Section 5; T124N-R72W, Edmunds			
S & S Construction Hot Springs, SD	91-421		\$2,000	1187013184	Wells Fargo Bank, Hot Springs	Release liability.
			\$1,000	1187013185	Wells Fargo Bank, Hot Springs	
		421003	NW1/4 NE1/4 Section 33; T6S-R7E, Custer			
Stava Gravel Clear Lake, SD	83-185		\$2,500	16980	Deuel County National Bank, Clear Lake	Release liability.
			\$500	26193	Deuel County National Bank Clear Lake	
		185008	NE1/4 Section 16; T113N-R50W, Deuel			
Butte County Highway Department Belle Fourche, SD	83-6		EXEMPT	NA	NA	Release liability.
		6002	51/2 SW 1 /4 SE1/4 Section 24; T8N-R6E, Butte			

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<u>Releases of Liability:</u>					
Fall River County Highway Department Hot Springs, SD	83-19	EXEMPT	NA	NA	Release liability.
		19042	S1 /2 Section 21; T7S-R7E, Fall River		
		19040	SE1 /4 Section 29; T7S-R7E, Fall River		
		19035	SE1 /4 NE1 /4 Section 7; T8S-R1E, Fall River		
		19017	N1 /2 Section 30; T9S-R2E, Fall River		
Pennington County Highway Department Rapid City, SD	83-45	EXEMPT	NA	NA	Release liability.
		45001	SW 1 /4 Section 3; T 1 N-R6E, Pennington		
<u>Acceptance of Surety Riders:</u>					
Crandall Construction Company Cayuga, ND	83-244	\$2,500	58037471	Western Surety Company	Accept rider increasing surety to \$3,500.
Dawson Construction Howard SD	83-21	\$7,000	103597870	Travelers Casualty & Surety Company of America	Accept rider increasing surety to \$10,000.

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License/Permit Holder,	Site No	Surety Amt.	Surety No.	Surety Company or Bank,	DENR Recommendation,
<i>Forfeiture of Surety:</i>					
William L. Wagner Custer, SD	88-376	\$500	62721	First National Bank, Pierre	Declare CD No. 62721 forfeited and transfer the proceeds from CD 62721 to the US Forest Service.
	376007	NW1 /4 Section 25; T4S-R4E, Custer			